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OFFICE OF PETITIONS

In re Application of :
Gerald Lacour, et al. :
Application No. 10/060,027 : ON PETITION
Filed: January 28, 2002 :
Attorney Docket No. SMARTEYE.PAT :
:

This is a decision in response to the petition under 37 CFR 1.137(b), filed April 9, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before March 16, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed December 15, 2008, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on March 20, 2009. A Notice of Abandonment was subsequently mailed on April 9, 2009. In response, on April 9, 2009, the present petition was filed.

The petition is not signed by an attorney or agent of record; however, in accordance with 37 CFR 1.34(a), the signature of B. Dell Chism appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. A courtesy copy of this decision is being mailed to petitioner. However, if Mr. Chism desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

Petitioners request that the application be revived for consideration of a Request for Continued Examination (RCE) under 37 CFR 1.114. However, in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply under 37 CFR 1.137(b) must be the payment of the issue fee or any outstanding balance thereof. Accordingly, the \$755 issue fee is being charged to counsel's deposit account as authorized.

Further, 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz.

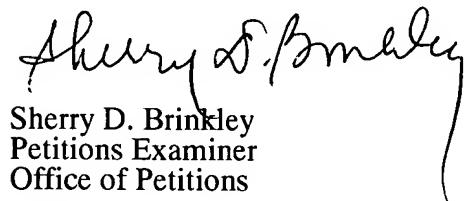
Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. However, if the above-identified application is again allowed, petitioner may request that the issue fee paid on April 9, 2009, be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.

The application file is being forwarded to Technology Center AU 3627 for further processing of the request for continued examination under 37 CFR 1.114 filed April 9, 2009.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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